IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiffs, vs. FRED C. WILLIAMS, M.D., Defendant.	No. CIV 90-438 TUC ACM **ORDER**

INTRODUCTION:

The United States brought this action against Fred C. Williams, M.D. for an unpaid student loan. Both sides filed Motions for Summary Judgment.

DISCUSSION:

Williams is liable for three times the amount of his loan plus interest pursuant to 42 U.S.C. § 254*o*(b)(1)(A). The facts of this case indicate that Williams signed a scholarship contract in 1979. He then extended his contract in 1980 and 1981. He did not extend his contract in 1982. Williams' action in 1982 did not rescind the contract. If this Court were to find that Williams rescinded the

contract, then any student who wanted to get out of such an obligation could simply extend his or her contract and then tell the College not to accept payment. Such an argument is contrary to the express terms of the contract.

CONCLUSION:

Accordingly,

IT IS ORDERED Plaintiff's Motion for Summary Judgment is hereby GRANTED and that judgment be entered against Defendant for $166,255.68 plus interest and costs.

IT IS FURTHER ORDERED that judgment be entered accordingly.

Dated this 19th day of November, 1991.

Alfredo C. Marquez

ALFREDO C. MARGUEZ
Senior Judge

Copies mailed this date to.

Robert Finn
4400 E. Broadway, Ste. 801
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APPENDIX E

§ 254*o*. **Breach of scholarship contract or loss repayment contract**

(a)(1) An individual who has entered into a written contract with the Secretary under section 338A [42 USCS § 254*l*] and who—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

(B) is dismissed from such educational institution for disciplinary reasons,

(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract before the completion of such training, or

(D) fails to accept payment or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract.

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(2) An individual who has entered into a written contract with the Secretary under section 338B [42 USC § 254*l*-1] and who—

(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 338B(b)(1)(B)(ii) [42 USCS § 254*l*-1(b)(1)(B)(ii),

in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

(b)(1)(A) Except as provided in paragraph 92), if an individual breaches his written contract by failing (for any reason not

specified in subsection (a) or section 338(d) [42 USCS § 254p(d)] either to begin such individual's service obligation under section 338A [42 USCS § 254p(d)] either to begin such individual's service obligation under section 338A [42 USCS § 254*l*] in accordance with section 338C or 338D [42 USCS §§ 254m or 254n] or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A = 3\phi \left(\frac{t-s}{t} \right)$$

in which "A" is the amount the United States is entitled to recover, " " is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loan bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and the "s" is the number of months of such period served by him in acordance with section 338C [42 USCS § 254m] or a written agreement under section 338D [42 USCS § 254n].

PART 62—NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP AND LOAN REPAYMENT PROGRAMS

Subpart A—National Health Service Corps Scholarship Program

Sec.

62.1 What is the scope and purpose of the National Health Service Corps scholarship program?
62.2 Definitions.
62.3 Who is eligible to apply for a scholarship program award?
62.4 To whom will scholarship program awards be available in addition to those individuals pursuing courses of study leading to degrees in medicine, osteopathy or dentistry?
62.5 How is application made for a scholarship program award?
62.6 How will individuals be selected to participate in the scholarship program?
62.7 What will an individual be awarded for participating in the scholarship program?
62.8 What does an individual have to do in return for the scholarship program award?
62.9 Under what circumstances can the period of obligated service be deferred to complete approved graduate training?
62.10 What will happen if an individual does not comply with the terms and conditions of participating in the scholarship program?
62.11 When can a scholarship program payment obligation be discharged in bankruptcy?
62.12 Under what circumstances can the service or payment obligation be canceled, waived or suspended?

§ 62.10 What will happen if an individual does not comply with the terms and conditions of participating in the scholarship program?

(a) If a participant, other than one described in paragraph (b) of this section, fails to accept payment or instructs the school not to accept payment of the scholarship provided by the secretary, the participant must, in addition to any service or other obligation incurred under the contract, pay to the United States the amount of $1,500 liquidated damages. Payment of this amount must be made within 30 days of the date on which the participant fails to accept payment of the scholarship award or instructs the school not to accept payment.

(b) When a participant fails to maintain an acceptable level of academic standing, is dismissed from the school for disciplinary reasons, or voluntarily terminates the course of study or program for which the scholarship was awarded before completing the course of study or program, the participant must, instead of performing any service obligation, pay to the United States an amount equal to all scholarship funds awarded under § 62.7. Payment of this amount must be made within 3 years of the date the participant becomes liable to make payment under this paragraph.

(c) If a participant fails to begin or complete the period of obligated service incurred under § 62.8, including failing to comply with the applicable terms and conditions of a determent granted by the Secretary, the participant must pay to the United States an amount determined by the formula set forth in section 754(c) of the Act. Payment of this amount shall be made within 1 year of the date that the participant failed to begin or complete the period of obligated service, as determined by the Secretary.